

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-16605
Non-Argument Calendar

<p>FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT July 29, 2005 THOMAS K. KAHN CLERK</p>
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D.C. Docket No. 04-20538-CR-PAS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALEXANDER MILIEN-FONG,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Florida

(July 29, 2005)

Before BLACK, CARNES and PRYOR, Circuit Judges.

PER CURIAM:

Alexander Milien-Fong appeals his 37-month concurrent sentences for conspiracy and possession with intent to distribute heroin, imposed because he violated 18 U.S.C. §§ 841(a) and (b)(1)(A)(i) and 846. He contends that the district court erred in light of United States v. Booker, 543 U.S. ___, 125 S.Ct. 738, 160 L.Ed.2d 261 (2005), by sentencing him under a mandatory Guidelines system.

As the government correctly concedes, there was Booker error, it was preserved, and the government cannot show that the error was harmless. Accordingly, Milien-Fong's sentence is due to be vacated and the case remanded for the limited purpose of re-sentencing in light of the Booker decision.

SENTENCE VACATED AND REMANDED.